

4 carrageenan, agar, agarose, an intramolecular complex of a polysaccharide, an oligosaccharide
5 and a macrocyclic polysaccharide.

E 1 23. (Once Amended) The carrier according to Claim ²¹~~1~~, wherein the polysaccharide
C3 2 gel comprises a polysaccharide selected from the group consisting of a cellulose
3 polysaccharide, starch, chitin, chitosan, hyaluronic acid, hydrophobe modified polysaccharide,
4 an alginate, a carrageenan, agar, agarose, an intramolecular complex of a polysaccharide, an
5 oligosaccharide and a macrocyclic polysaccharide.

REMARKS

This Reply is in response to the Office Action mailed on September 26, 2001, in which claims 1-70 were rejected. With this Amendment and Reply, claims 3 and 23 are amended. Applicant respectfully requests consideration of the amended claims. Applicant appreciates the indication of allowability of claims 1-70 over the prior art. Applicant also appreciates the helpful telephone interview conducted on November 27, 2001 between the Examiner Theresa Strzelecka and Marshall Brown, attorney for Applicant. During this interview, the conferees discussed each of the rejections under 35 U.S.C. § 112 and the potential resolution of the outstanding issues. While formal agreement was not reached in the telephone interview, it is believed the amendments alone, which are the ones agreed upon in the conference, will overcome all rejections.

The Examiner noted that the application as originally filed contained no reference to provisional application no. 60/148,590 on the first page of the specification. In response to this objection, Applicant has amended the specification to include such a claim of priority. A substitute page of the specification is included herein.

The Examiner rejected claims 1, 12, 13, 21, 32, 33, 41, 42, 48, 49 and 55 under 35 U.S.C. § 112, second paragraph as being indefinite. In particular, the Examiner asserted that these claims contained the limitation "biomaterial" which is not defined in the specification.

In response to this rejection, Applicant notes that words in a claim are normally given their ordinary meaning. *See Dow Chemical v. Sumitomo Chemical Co.*, 59 U.S.P.Q.2d 1609 (Fed Cir. 2001), and that dictionaries may be referred to in determining the ordinary meaning. *See Optical Disc Corp. v. Del Mar Avionics*, 54 U.S.P.Q.2d 1289 (Fed. Cir. 2000). For example, *Random House Webster's College Dictionary* defines "biomaterial" as "a natural or synthetic material that is compatible with living tissue and is suitable for surgical implanting." In the present application, Applicant has made no statements or assertions that would indicate a definition contrary to the term's ordinary meaning. During the November 27, 2001 interview, the Examiner substantially agreed with this proposition and that no amendment to these claims would be necessary.

The Examiner rejected claims 3 and 23 under 35 U.S.C. § 112, second paragraph as being indefinite due to the limitation "an alginate a carrageenan," Applicant notes that this phrase was solely the result of a typographical error in which a comma was omitted from both of the claims. Applicant has therefore amended claims 3 and 23 to include a comma after the word "alginate."

The Examiner rejected claims 8 and 28 under 35 U.S.C. § 112, second paragraph as being indefinite due to the phrase "and mixtures thereof" as part of the Markush group recited in each claim. In response to this rejection, Applicant asserts that claims 8 and 28 as originally filed are not indefinite because the Markush group in each claim consists of a definite group of substances. In particular, Applicant notes that each of the Markush groups consists only of those substances recited in the claims and combinations of those same substances; substances not listed the Markush groups may not be included. During the November 27, 2001 interview, the Examiner agreed with this assertion and indicated that no amendment was required for the rejection to be overcome.

Lastly, the Examiner rejected claims 1, 21, 41, 55, 59, 60, 63, 64, 67 and 67 under 35 U.S.C. § 112, second paragraph as containing a limitation of the polysaccharide gel viscosity

without describing the conditions under which they were obtained. In response to this rejection, Applicant notes that the pages 26 and 27 of the present application describe the viscosity of the gel as measured with a Brookfield Viscometer with a RU#7 spindle at 16 revolutions per minute at 25 degrees Celsius. The Examiner indicated that this portion of the specification was sufficient to eliminate the rejection for the above-referenced claims.

Applicant therefore submits that all outstanding rejections to the pending claims and specifications have been overcome by the foregoing amendments and remarks, and that each of pending claims 1-70 are now in condition for allowance. Reconsideration and favorable action are hereby respectfully requested, and Applicant respectfully requests an early notice of allowance on these claims. A check for \$935 is submitted with this reply. The Assistant Commissioner is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account No. 06-1450 of Foley & Lardner. A duplicate copy of this response is attached for this purpose.

Respectfully submitted,

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